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September 13, 2004

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Office of Secretary

By Messenger

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
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Washington, DC 20002

DOCKET FILE COPY ORIGINAL

**Re: WT Docket No. 03-66
Opposition to Petition for Reconsideration
The School Board of Miami-Dade County, Florida
Dismissed Modification Application for KTB85
(File No. BMPLIF-19950915HW)**

Dear Ms. Dortch:

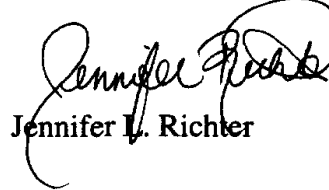
On behalf of the School Board of Palm Beach County, and its excess capacity lessee WBSWP Licensing Corporation, and pursuant to Sections 1.51 and 1.106(g) of the Commission's rules, please find attached an original and fourteen (14) copies of an Opposition to the Petition for Reconsideration filed by The School Board of Miami-Dade County, Florida on August 30, 2004, seeking reconsideration of the Commission's decision on July 29, 2004 to dismiss the above-referenced modification application for KTB85. The Commission's decision to dismiss the modification application was contained in Exhibit E to the Report and Order released in the following proceeding: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, FCC 04-135 (July 29, 2004).

MORRISON & FOERSTER LLP

Marlene H. Dortch, Secretary
September 13, 2004
Page Two

Please date-stamp one enclosed copy of this submission and return it to my attention in the self-addressed, stamped, return envelope. Should any questions arise regarding this filing, please communicate directly with the undersigned. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Richter", with a large, stylized flourish at the end.

Jennifer L. Richter

In the Matter of Application of)	
)	
THE SCHOOL BOARD OF MIAMI-DADE)	WT Docket No. 03-66
COUNTY, FLORIDA)	
)	
For Authorization to Modify Facilities of ITFS)	File No. BMPLIF-19950915HW
Station KTB85)	
)	
Miami, Florida)	
)	

dc-391245

filed, should have been dismissed nine (9) years ago, and it was properly dismissed by the Commission pursuant to the July 29, 2004 *Report and Order and Further Notice of Proposed Rulemaking*.³ The Dade Modification Application should not be reinstated.

I. BACKGROUND.

The Dade Modification Application proposes major changes to KTB85 including: (1) migrating the station from the F-group to the G-group; (2) moving the station to the north; (3) increasing the tower height; (4) increasing power; (5) changing the antenna pattern from omnidirectional to directional (pointed north toward Broward and Palm Beach counties); and (5) altering the polarization of the station from vertical to horizontal. The Commission's determination in 1996 that the Dade Modification Application is mutually exclusive with a modification application filed by Palm Beach for the G-group (KZB29) is incorrect. The defective Dade Modification Application was unacceptable for filing, and should have been dismissed before it was designated as mutually exclusive with Palm Beach, because the proposal contained in the Dade Modification Application is mutually exclusive with the *previously authorized* G-group station in Broward County, KTZ22, licensed to The School Board of Broward County, Florida ("Broward"). The major changes proposed in the Dade Modification Application are predicted to cause devastating interference to KTZ22 in violation of Commission rules. The Dade Modification Application also did not contain an interference consent letter

(Footnote continued from previous page.)

in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, Report and Order, 98 FCC 2d 129, 132-133 (1984).

³ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, FCC 04-135 (July 29, 2004) ("Report and Order").*

from Broward in violation of the rules.⁴ Broward notified the Commission of its objection to the interference. The Dade Modification Application should have been dismissed years ago, and was properly dismissed on July 29, 2004.

Dade argues that it is in the “public interest” and in the Commission’s interest to grant the Dade Modification Application because it will migrate a “grandfathered” F group in Miami. There is no public interest served by granting a proposal that will cause devastating interference to the previously authorized facilities for KTZ22 and would reallocate a significant portion of Broward’s G-group protected service area (“PSA”) to Dade in violation of the rules. Reinstatement and grant of the Dade Modification Application is not in the public interest.

II. THE DADE MODIFICATION APPLICATION IS MUTUALLY EXCLUSIVE WITH A PREVIOUSLY AUTHORIZED STATION AND SHOULD HAVE BEEN DISMISSED YEARS AGO.

A. The Dade Modification Application Is Not Mutually Exclusive With The Palm Beach Modification Application.

Dade argues that the Dade Modification Application should not have been dismissed as mutually exclusive pursuant to the *Report and Order* because its application will not be mutually exclusive in the future.⁵ Although the *Report and Order* is silent as to the facilities the Commission believes are mutually exclusive with the Dade Modification Application, Dade asserts that the Dade Modification Application is mutually exclusive with a modification application filed by Palm Beach for KZB29 in May of 1995 (the “Palm Beach Modification

⁴ Other applications filed for Miami are similarly defective under Section 74.903 for reasons of harmful interference and should have been dismissed years ago: (1) Modification application filed by the Friends of WLRN, Inc. for the B-group (WHR866), File No. BMPLIF950515DA, as modified by a May 22, 1995 application (missing consent letter from the School Board of Broward County); and (2) Modification application filed by the School Board of Dade County regarding the C-group (WHG230) File No. BMPLIF19950915ZA (missing consent letter from Florida Atlantic University).

⁵ *Petition* at 4-5.

Application”).⁶ A 1996 Public Notice, *ITFS Applications Accepted for Filing*, listed the Palm Beach Modification Application and the Dade Modification Application as mutually exclusive (the “1996 MX Notice”).⁷ Dade argues that pursuant to the *Report and Order*, the Wireless Telecommunications Bureau (“Bureau”) “must” dismiss the Palm Beach Modification Application because the application does not seek to move the PSA for KZB29.⁸ Following such dismissal, Dade asserts that the alleged mutual exclusivity with the Palm Beach Modification Application would be eliminated, and the Dade Modification Application could be reinstated and processed, because it would no longer be mutually exclusive with any other previously proposed or authorized station.

Dade’s argument fails for two reasons. First, Dade’s conjecture about the future dismissal of the Palm Beach Modification Application is irrelevant. The relevant date for determining mutual exclusivity was the release date of the *Report and Order*, July 29, 2004. The Palm Beach Modification Application was not dismissed as of July 29, 2004 and, to the extent the staff determines to dismiss such application in the future, that decision will not be made until sometime after the new rules proposed in the *Report and Order* become effective.

More importantly, however, any alleged mutual exclusivity with the Palm Beach Modification is *secondary* to Dade’s mutual exclusivity with Broward’s previously authorized station, KTZ22. Because of this mutual exclusivity, the Dade Modification Application was unacceptable for filing and should have been dismissed in 1995. Contrary to the Commission’s

⁶ File No. BMPLIF-950524DM.

⁷ See FCC Public Notice, *ITFS Applications Accepted for Filing*, Rep. No. 23836B (rel. Sept. 30, 1996).

⁸ *Petition* at 4-5. Pursuant to the *Report and Order*, the Wireless Telecommunications Bureau is directed to “dismiss all pending applications to modify MDS or ITFS stations, except for modification applications that could change an applicant’s PSA, or applications for facilities that would have to be separately applied for under the rules we adopt today.” *Report and Order* ¶ 58.

prior rulings, there was never any mutual exclusivity between the Dade Modification Application and the Palm Beach Modification Application.⁹

WBSWP timely filed a *Petition to Deny* and other pleadings and letters with the Commission in 1996, 1997 and 1998 explaining that the *1996 MX Notice* improperly listed the Dade Modification Application as acceptable for filing.¹⁰ WBSWP explained that due to the interference to Broward's KTZ22, without Broward's consent, the Dade Modification Application is fatally and fundamentally flawed, unacceptable for filing and, therefore, *not* mutually exclusive with the Palm Beach Modification Application. Had the Commission properly dismissed the Dade Modification Application pursuant to Sections 74.910 and 73.3566 of the Commission's rules as unacceptable for filing in 1995,¹¹ the Dade Modification Application would not have been listed as mutually exclusive with the Palm Beach Modification Application in the *1996 MX Notice*. There is no mutual exclusivity between Dade and Palm Beach on the G-group.

⁹ The Dade Modification Application was also unacceptable for filing on September 15, 1995, because the Palm Beach Modification Application achieved "cut-off" status as of July 7, 1995 (contrary to the Commission's public notice) and was, therefore, not subject to any further competing applications. See, WBSWP Petition to Dismiss or Deny at 5-15 (Nov. 1, 1996) ("*Petition to Deny*"). In addition, the Dade Modification Application was unacceptable because it sought to modify a station, KTB85, whose license had expired and whose call sign had been deleted. See *id.* at 2-5.

¹⁰ See, *Petition to Deny*. See also, WBSWP Reply (Mar. 5, 1997) (against the Dade Modification Application). See also, Letter from James S. Blitz, Counsel, WBSWP, to Clay C. Pendarvis, Acting Chief, Distribution Serv. Branch, Video Serv. Div., FCC, DA 98-2070 (Nov. 12, 1998) ("1998 Counsel Letter" attached hereto as Exhibit 1) (filed in Response to FCC Public Notice, *ITFS Mutually Exclusive Applications – Settlement Period*, 13 FCC Rcd 20380 (1998)).

¹¹ 47 C.F.R. §§ 74.910, 73.3566. Section 73.3566 is applicable to ITFS through Section 74.910 of the rules. Section 73.3566 states: "Applications which are determined to be patently not in accordance with the FCC rules, regulations or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing, or if inadvertently accepted for filing will be dismissed."

B. The Dade Modification Application Is Mutually Exclusive With Broward's Previously Authorized Station, KTZ22.

The Commission's first task when receiving an application for the Instructional Television Fixed Service, the Multipoint Distribution Service, or any other service, is to determine whether the application is mutually exclusive with any previously filed application or any previously authorized station.¹² Had the Commission properly undertaken this analysis regarding the Dade Modification Application in 1995, it would have discovered that the Dade Modification Application is mutually exclusive with, and cannot be granted in view of, the interference caused to Broward's licensed facilities for KTZ22. The major changes proposed in the Dade Modification Application are predicted to cause unacceptable harmful electrical interference to 72 of Broward's 189 receive sites for KTZ22, with severe interference to 54 of Broward's receive sites,¹³ in clear violation of Section 74.903(d) of the rules.¹⁴ The Dade Modification Application also does not contain an interference consent letter from Broward, the licensee of KTZ22, as required by Section 74.903(b)(4) of the rules.¹⁵ In view of the interference to, and mutual exclusivity with, Broward's previously authorized facilities for KTZ22, the Dade Modification Application was unacceptable for filing, and was properly dismissed by the Commission.

¹² See, *Guadalupe Valley Electric Cooperative*, 11 FCC Rcd 7434, 7435 (1996) (A proposal is considered mutually exclusive when it is predicted to cause harmful electrical interference to, or would materially impair service from, a previously proposed or authorized station).

¹³ See Declaration of Kenneth Gores (attached to *Petition to Deny*).

¹⁴ 47 C.F.R. § 74.903(d).

¹⁵ *Id.* § 74.903(b)(4).

Broward filed a Petition to Deny against the Dade Modification Application based upon the predicted interference to KTZ22.¹⁶ Broward stated that it “believes that a substantial number . . . of its current receive sites[,] will receive harmful interference from the proposed operation of the Miami station. The fact that no interference study is enclosed with the application further raises the concerns of the School Board.”¹⁷ Broward’s Superintendent of Schools emphasized in a letter to the Commission: “[T]he School Board of Broward County, Florida has every intent of protecting its interest in the continued use of the G-group ITFS channels in the Broward county, Florida area . . . We object to any interference which might adversely affect any of our receive sites.”¹⁸

As Broward noted, the Dade Modification Application did not contain an interference study regarding KTZ22. Instead, Dade proffered a “consent letter,” about which Broward was completely unaware, in which Broward purported to consent to the Dade interference. Upon learning of the unauthorized letter, Broward expressly disavowed its legitimacy to the Commission.¹⁹ The letter stated that “the *Broward County Instructional Television Center* has no objection to (the Miami) proposal.”²⁰ However, Broward noted to the Commission that the Broward County Instructional Television Center has no authority to speak on behalf of *The School Board of Broward County, Florida*: “As is plain from the face of the letter, the letter did not issue from nor represent the views of the licensee of the ITFS facilities, The School Board

¹⁶ See, School Board of Broward County, Florida Petition to Deny, (Nov. 1, 1996) (“*Broward Petition to Deny*,” attached hereto as Exhibit 2).

¹⁷ *Id.* at 2.

¹⁸ Cover letter to *Broward Petition to Deny*.

¹⁹ Affidavit of Dale F. Carls at 1 (“Carls Affidavit”) (attached to *Broward Petition to Deny*).

²⁰ *Broward Petition to Deny* at 2 (*emphasis added*).

itself. For that reason alone, it cannot be considered a commitment of the School Board.”²¹

Broward stated, “It is not now, nor has it ever been, the intention of the School Board of Broward County, Florida to accept any level of interference to their KTZ22 receive sites from this or any other station.”²² Thus, the Dade Modification Application, which is predicted to cause interference to a substantial number of Broward’s receive sites for KTZ22, is clearly in violation of Section 74.903(d) of the rules,²³ and it also violates Section 74.903(b)(4) of the rules by not containing a valid interference consent letter from Broward, the licensee of KTZ22.²⁴

The Broadband Division of the Bureau, the Private Wireless Division of the Bureau and the Video Services Division of the Mass Media Bureau, each of whom has had (or has, in the case of the Broadband Division) jurisdiction over ITFS, have all affirmed that consent letters from affected parties must be filed with the original application.²⁵ The Dade Modification Application did not contain the required consent letter from Broward and, as Broward noted to

²¹ *Id.*

²² Carls Affidavit at 1.

²³ 47 C.F.R. § 74.903(d).

²⁴ *Id.* § 74.903(b)(4).

²⁵ See *Wireless Cable of Florida*, 19 FCC Rcd 6390, 6392 (2004) (“The Commission has recently affirmed that consent letters must be filed with the original application because ‘considering consent letters that did not exist at the time the original application was filed encourages the filing of incomplete applications and places an undue burden on the Commission’s limited resources.’” citing *Educational Television Association of Metropolitan Cleveland, Inc.*, 18 FCC Rcd 15117, 15120 (2003).); see also *Centre Unified School District #397*, 18 FCC Rcd 19235, 19238 (2003) (“The Commission’s Rules require applicants to submit consent letters from the affected parties with the original application. Pursuant to Section 74.903 of the Commission’s Rules, an application for an ITFS station must protect previously proposed facilities from interference and will not be granted if interference is predicted to occur.”); *Bartlesville Public Schools*, 18 FCC Rcd 18103, 18105 (2003) (“The Commission’s Rules require applicants to submit consent letters from the affected parties with the original application.” citing *Guadalupe Valley Electric Cooperation*, 11 FCC Rcd 7434, 7442-43 (1996); *4,330 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites*, 10 FCC Rcd 1335, 1465-66 (1994); *Family Entertainment Network, Inc.*, 9 FCC Rcd 566, 567-68 n.10 (1994).).

the Commission, Broward objects to such interference.²⁶ By failing to demonstrate interference protection to KTZ22, and by failing to obtain an interference consent letter from Broward, the Dade Modification Application violates Commission rules and precedent and was properly dismissed.

III. DESPITE DADE'S PUBLIC INTEREST ARGUMENTS, THE COMMISSION CANNOT GRANT DADE A PSA ON THE G-GROUP IN MIAMI.

Dade argues in its *Petition* that reinstatement and grant of the Dade Modification Application is in the public interest because it will eliminate a grandfathered F-group in Miami, and that Dade should be afforded a PSA on the G-group in Miami because such a PSA will not adversely impact Palm Beach's PSA for its G-group, KZB29.²⁷ Dade ignores the adverse impact on, and harmful interference to, the previously authorized Broward facilities for KTZ22 or Broward's PSA for KTZ22. Grant of the Dade Modification Application would cause devastating interference to Broward's previously authorized facilities for KTZ22 and would reallocate a significant portion of the Broward PSA to Dade in violation of the rules.

As the diagram attached to Dade's *Petition* shows, Broward's PSA would be reduced by at least one third if the defective Dade Modification Application is granted and Dade is awarded a G-group PSA in Miami. This could have a serious impact on Broward's ability to serve its receive sites, particularly any of its 189 receive sites that could be located in Dade's proposed portion of the "split" PSA as depicted in Dade's diagram. Regardless, the fatally defective Dade Modification Application does not justify grant of a PSA to Dade on the G-group in Miami; KTB85 is only entitled to a PSA on the F-group in Miami as presently authorized. Grant of the Dade Modification Application would clearly violate the Commission's rules and would not be

²⁶ Cover letter to *Broward Petition to Deny*.

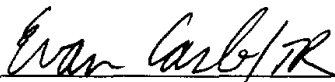
²⁷ *Petition* at 6.

in the public interest. There is no public interest served by granting a proposal that will cause devastating interference to a previously authorized facility.

IV. CONCLUSION.


The Dade Modification Application was properly dismissed pursuant to the *Report and Order* and should have been dismissed in 1995 pursuant to Commission rules and precedent which require non-interference to previously authorized facilities or the timely filing of interference consent letters from affected parties. The Dade Modification Application was mutually exclusive when filed with the previously authorized facilities of Broward on KTZ22; Broward did not consent to the predicted interference from Dade's proposed facilities on KTB85 and thus the Dade Modification Application was unacceptable for filing. Dade is not entitled to a PSA on the G-group in Miami based upon its fatally defective Dade Modification Application, and grant of such a PSA would not be in the public interest regardless of Dade's "grandfathered" status. For the foregoing reasons, the Dade Modification Application was properly dismissed and should not be reinstated.

Respectfully submitted,


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*Attorney for School Board
of Palm Beach County*

Dated: September 13, 2004


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Attorneys for WBSWP Licensing Corporation

CERTIFICATE OF SERVICE

I, Theresa Rollins, do hereby certify that I have on this 13th day of September 2004, had copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** delivered to the following via electronic mail or U.S. First Class mail as indicated:

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Theresa Rollins

EXHIBIT 1

1998 Counsel Letter



Davis Wright Tremaine LLP

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November 12, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Clay C. Pendarvis, Esq., Acting Chief
Distribution Services Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M St., N.W., Room 702
Washington, D.C. 20554

Re: Application to Modify ITFS Station KZB-29, Boynton Beach, Florida
School District of Palm Beach County, Florida
File No. BMPLIF-950524DM

Application to Modify ITFS Station KTB-85, Miami, Florida
School Board of Dade County, Florida
File No. BMPLIF-950915HW

Application for New ITFS Station, Miami, Florida
Barry University
File No. BPLIF-951020PU

Dear Mr. Pendarvis:

On October 15, 1998, the Commission released a Public Notice reminding ITFS applicants of a settlement period for mutually exclusive ITFS applications.¹ In light of that Public Notice, WBSWP Licensing Corp ("WBSWP"), by its attorneys, herein asks that the Commission reconsider its September 30, 1996 and October 3, 1998 Public Notices announcing that the above-referenced applications had been accepted for filing and, upon initial review, found to be mutually exclusive.² Upon such reconsideration, WBSWP requests that the Commission dismiss both the application to

1 See "ITFS Mutually Exclusive Applications – Settlement Period," DA 98-2070.

2 See "ITFS Applications Accepted For Filing," Report Nos. 23836C and 23839A. WBSWP has entered into an agreement with the School District of Palm Beach County, Florida (the "Palm Beach District") to lease the excess channel capacity of the Palm Beach District's ITFS Station KZB-29 in connection with a wireless cable system that WBSWP is developing in the West Palm Beach, Florida market.



Clay C. Pendarvis, Esq., Acting Chief
November 12, 1998
Page 2

modify Station KTB-85 (the "KTB-85 Application") and the application for a new ITFS station filed by Barry University (the "Barry Application").

As WBSWP has explained in this proceeding, both the KTB-85 Application and the Barry Application are both defective and should immediately be dismissed.³ The primary reason for these dismissals is the objectionable interference that the applications would cause to the facilities of ITFS Station KTZ-22, licensed to the School Board of Broward County (the "Broward Board"). Under the Commission's Rules, the Commission may not even process the KTB-85 Application or the Barry Application unless the applicants supply a "no-objection letter" from the Broward Board.⁴

In an attempt to address this flaw in the KTB-85 Application and the Barry Application, each application relied on a purported "no-objection" letter executed by Dr. Joseph J. Ceros-Livingston, who directed the Broward Board's Division of Instructional Television Division of Policy Planning, Accountability, Desegregation, and Technology, but who has since been relieved of his responsibilities. As an initial matter, Dr. Ceros-Livingston's letter demonstrates that he was not even purporting to speak on behalf of the Broward Board. In separate Petitions to Deny that the Broward Board filed against the KTB-85 Application and the Barry Application, the Board explained:

"As is plain from the face of the letter [from Dr. Ceros-Livingston], the letter did not issue from nor represent the views of the licensee of the ITFS facility, The School Board itself. For that reason alone, it cannot be considered a commitment of The School Board."⁵

Furthermore, the Broward Board has expressly disavowed Dr. Ceros-Livingston's letter. In a declaration filed with the Broward Board's Petitions to Deny, the Operations Manager of the Broward ITV Center stated that he is unaware of the existence of any no-objection letter, but that even if such a letter exists:

"[i]t is not now, nor has it ever been, the intention of the School Board of Broward County, Florida to accept any level of interference to their KTZ-22 receive sites from this or any other station."⁶

³ See WBSWP's "Petition to Dismiss or Deny," filed November 1, 1996 and "Reply," filed March 5, 1997 against the KTB-85 Application, and WBSWP's "Petition to Dismiss or Deny," filed November 1, 1996 and "Reply," filed March 5, 1997 against the Barry Application.

⁴ See 47 C.F.R. § 74.903(b)(4).

⁵ Broward Board's "Petition to Deny" against the KTB-85 Application, November 1, 1996, at 2; Broward Board's "Petition to Deny" against the Barry Application, November 1, 1996, at 2. p

⁶ Broward Board's "Petition to Deny" against the KTB-85 Application, Affidavit of Dale F. Carls, at p. 1;

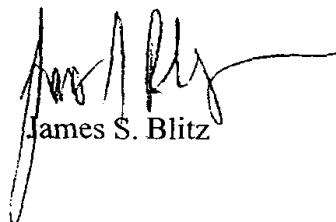


Clay C. Pendarvis, Esq., Acting Chief
November 12, 1998
Page 3

In light of the licensee's explicit rejection of Dr. Ceros-Livingston's alleged "no-objection" letter that is needed to validate both the KTB-85 Application and the Barry Application, it is clear that the Commission should never have accepted these applications to begin with.⁷ For these reasons and the other reasons discussed in WBSWP's and the Broward Board's filings against the KTB-85 Application and the Barry Application, the Commission should promptly dismiss both the KTB-85 Application and the Barry Application as defective applications that are patently not in accordance with the Commission's Rules. 47 C.F.R. §§ 73.3566, 74.910.

Should any questions arise in connection with this matter, please communicate directly with the undersigned.

Very truly yours,



James S. Blitz

cc: Charles Dziedzic, Esq.
Mr. Melvin Collins
Paul J. Sinderbrand, Esq.
William D. Wallace, Esq.
E. Ashton Johnston, Esq.
Wayne Coy, Jr., Esq.

Broward Board's "Petition to Deny" against the Barry Application, Affidavit of Dale F. Carls, at p. 1.

⁷ Furthermore, even if the letter constituted the licensee's authorized "no-objection" letter, the Commission still must independently evaluate the impact of a no-objection letter to determine whether the interference being accepted is so significant that it should nonetheless dismiss or deny the underlying application. Since an ITFS licensee might, for example, be coerced into signing a "no-objection" letter, or may not fully understand the implications of what it is signing, the Commission must still evaluate the application and the interference it will create, notwithstanding the existence of a "no-objection" letter, to determine whether granting the application would serve the public interest. In this case, such an evaluation would indicate that the interference the KTB-85 Application and the Barry Application would create to Station KTZ-22 is extensive and unacceptable.

EXHIBIT 2

Broward Petition to Deny



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

600 SOUTHEAST THIRD AVENUE • FORT LAUDERDALE, FLORIDA 33301-3125 • TEL (954) 765-6271 • FAX (954) 760-7483

DR. FRANK R. PETRUZIELO
Superintendent of Schools

SCHOOL BOARD

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DR. ROBERT D. PARKS
DR. DON SAMUELS
DIANA WASSERMAN

October 30, 1996

The Secretary
Federal Communications Commission
Washington, D. C. 20554

**RE: FCC File #BMPLIF-950915HW; Modification of License, ITFS Station KTB-85;
School Board of Dade County, Florida**

Dear Mr. Secretary:

The enclosed affidavit constitutes our petition to deny the above referenced application.

As the thirty-year licensee of ITFS station KTZ-22, the School Board of Broward County, Florida, has every intent of protecting its interest in the continued use of the G group ITFS channels in the Broward County, Florida, area.

The above referenced application appears to have omitted vital information regarding the potential for possible interference with our receive sites for station KTZ-22. We object to any interference which might adversely affect any of our receive sites.

Sincerely,

Frank R. Petruzielo
Superintendent of Schools

FRP/EEA/NGT:dc
Enclosure

STAMP AND RETURN

BEFORE THE

Federal Communications Commission

In re Application of

SCHOOL BOARD OF DADE
COUNTY, FLORIDA

For Modification of
ITFS Station KTB-85
Miami, Florida

To: Chief, Video Services Division

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File No. BMPD 950915HW
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Petition To Deny

The School Board of Broward County, Florida, licensee for thirty years of Instructional Fixed Television Station KTZ-22, Fort Lauderdale, Florida, by and through its attorney, hereby files its Petition to Deny the above-captioned application. In support whereof, the following is offered:

1. By way of background, The School Board of Broward County has been delivering quality educational programming to more than two hundred schools and other instructional receive sites for more than thirty years. It has done so without a wireless partner, and, based on the needs it sees into the future, continues to plan to operate without a wireless partner. Wireless cable entrepreneurs are working with educators in West Palm Beach, to the North, and Dade County Schools and other entities to the South to develop wireless cable systems in those areas. Broward County has no desire to thwart the plans of the schools and their partners in either of these

jurisdictions in full deployment of successful wireless operations, but only if those plans do not involve harmful interference to the well-established, long-standing service to the schools of Broward County.

2. The substance of this Petition to Deny is contained in the attached sworn statement of Dale F. Carls, Operations Manager of the Instructional Television Center within the Broward School System. He alleges that a key element of the application is contained in a letter that was missing from the application. Upon reflection, it is assumed that the letter in question is one issued by one Joseph J. Ceros-Livingston, then Director of the Instructional Television Center, in which he states that "the Broward County Instructional Television Center has no objection to (the Miami) proposal." As is plain from the face of the letter, the letter did not issue from nor represent the views of the licensee of the ITFS facility, The School Board itself. For that reason alone, it cannot be considered a commitment of The School Board.

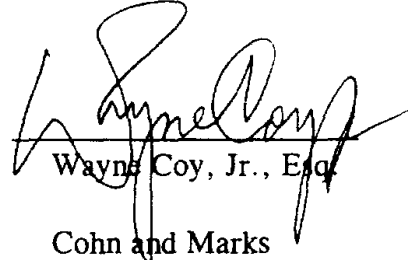
3. Secondly, the "assurances" that supported the issuance of the letter came from the wireless cable partner of the above-captioned school, and that wireless partner is no longer in the picture. Such assurances must be regarded as worthless, absent some reaffirmation or representation from the new wireless entity that now seeks to use the letter to support its application.

4. The School Board now believes that a substantial number, perhaps as high as 40 of its current receive sites will receive harmful interference from the proposed operation of the Miami station. The fact that no interference study is enclosed with the application further raises the concerns of The School Board.

For all of the above reasons, The School Board of Broward County respectfully urges that the above-captioned application be DENIED.

Respectfully submitted

By:



Wayne Coy, Jr., Esq.

Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036-1573

(202) 293-3860


November 1, 1996

A F F I D A V I T

I, Dale F. Carls, Operations Manager, Instructional Television Center, School Board of Broward County, Florida, 6600 S.W. Nova Drive, Fort Lauderdale, Florida, 33317, under threat of perjury, do solemnly swear that the following statement is true and accurate to the best of my knowledge:

1. With reference to FCC file number BMPLIF-950915HW, an application from The School Board of Dade County, Florida, for the modification of the license for ITFS station KTB-85, currently operating on channels F1 - F4, and proposing to move to channels G1 - G4;
 - a. Exhibit E-5; CO-CHANNEL INTERFERENCE STUDY; Paragraph 2; STATEMENT CONCERNING STATION KTZ-22, MIAMI, FLORIDA:
 - (i) KTZ-22 is licensed to The School Board of Broward County, Florida, as indicated in the exhibit, but is located in Fort Lauderdale, Florida, not Miami.
 - (ii) The exhibit refers to an attached Figure A.1, a letter from the School Board of Broward County, Florida, accepting interference caused to KTZ-22 from their modified 50 watt Miami station. The copy of the application in our possession includes no such Figure A.1 nor such letter otherwise referenced. Furthermore, to the best of my knowledge, no such letter exists or ever existed. It is not now, now has it ever been, the intention of the School Board of Broward County, Florida, to accept any level of interference to their KTZ-22 receive sites from this or any other station.

- b. The application does not include detailed co-channel interference studies for station KTZ-22. We therefore have no means of determining what, if any, interference this proposed station might cause to station KTZ-22, currently licensed to the School Board of Broward County, Florida, for operation on the G group channels.

SIGNED: 
Dale F. Carls, Operations Manager
Instructional Television Center

DATE: October 30, 1996